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10 IN THE UNITED STATES DISTRICT COURT
11 FOR THE NORTHERN DISTRICT OF CALIFORNIA
12 SAN JOSE DIVISION

13
14 **MICHAEL V. NICKERSON,**

15 Plaintiff,

16 v.

17 **RON BROOMFIELD, et al.,**

18 Defendants.
19

No. 5:20-cv-06326-EJD (PR)

**DECLARATION OF ZEWUGEBERHAN
DESTA IN SUPPORT OF MOTION TO
DISMISS AND FOR SUMMARY
JUDGMENT**

Judge: The Honorable Edward J. Davila
Trial Date: Not Set
Action Filed: September 9, 2020

20 I, Zewugeberhan Desta, declare as follows:

21 1. I am an attorney admitted to practice before the courts of the State of California and
22 before this Court. I am employed by the California Attorney General's Office as a Deputy
23 Attorney General in the Correctional Law Section. I represent Defendants Allison, Broomfield,
24 and Clark. I am competent to testify to the matters set forth in this declaration and, if called
25 upon by this Court, would do so. I submit this declaration in support of Defendants' Motion to
26 Dismiss and for Summary Judgment (exhaustion).
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2. Attached as **Exhibit A** is a true and correct copy of the court's Order Appointing a Receiver in the matter of *Plata v. Newsom*, Case No. 01-CV-01351-JST, ECF No. 473 (N.D. Cal., February 14, 2006).

3. Attached as **Exhibit B** is a true and correct copy of the United States Centers for Disease Control and Prevention's *Interim Guidance on Management of Coronavirus Disease 2019 (COVID-19) in Correctional and Detention Facilities*, published at [http://web.archive.org/web/20200527142847/https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#verbal-screening-as-it-existed-on-December 22, 2021](http://web.archive.org/web/20200527142847/https://www.cdc.gov/coronavirus/2019-ncov/community/correction-detention/guidance-correctional-detention.html#verbal-screening-as-it-existed-on-December-22,-2021).

4. Attached as **Exhibit C** is a true and correct copy of CCHCS' Guidelines for Achieving and Maintaining Social Distancing in California Prisons, issued by Receiver J. Clark Kelso on April 10, 2020. These guidelines are extensively discussed in *Plata v. Newsom*, 445 F. Supp. 3d 557, 565-66 (N.D. Cal. Apr. 17, 2020).

5. Attached as **Exhibit D** is a true and correct copy of CCHCS' Guidelines for Achieving and Maintaining Social Distancing in California Prisons, issued by Receiver J. Clark Kelso on April 12, 2020. These guidelines are extensively discussed in *Plata v. Newsom*, 445 F. Supp. 3d at 565-66.

6. Attached as **Exhibit E** is a true and correct copy of excerpts from a certified transcript of the video recording of California Senate Public Safety Committee July 1, 2020, Senate Hearing on COVID-19 in California State Prisons, published at <https://www.senate.ca.gov/media/senate-public-safety-committee-20200701/video> as it existed on December 22, 2021.

7. Attached as **Exhibit F** is a true and correct copy of the Notice of Filing of Receiver's Forty-Fifth Tri-Annual Report and Tri-Annual Report in the matter of *Plata v. Newsom*, No. 01-CV-01351-JST, ECF No. 3457 (N.D. Cal. Oct 1, 2020).

8. Attached as **Exhibit G** is a true and correct copy of excerpts from the parties' Joint Case Management Conference Statement in the matter of *Plata v. Newsom*, No. 01-CV-01351-JST, ECF No. 3328 (N.D. Cal. May 20, 2020).

1 9. Attached as **Exhibit H** is a true and correct copy of excerpts from the Reporter's
2 Transcript of Telephonic Proceedings in the matter of *Plata v. Newsom*, No. 01-CV-01351-JST,
3 ECF No. 3334 (N.D. Cal. May 21, 2020).

4 10. Attached as **Exhibit I** is a true and correct copy of excerpts from the parties' Joint
5 Case Management Conference Statement in the matter of *Plata v. Newsom*, No. 01-CV-01351-
6 JST, ECF No. 3332 (N.D. Cal. May 27, 2020).

7 11. Attached as **Exhibit J** is a true and correct copy of excerpts from the parties' Joint
8 Case Management Conference Statement in the matter of *Plata v. Newsom*, No. 01-CV-01351-
9 JST, ECF No. 3345 (N.D. Cal. June 8, 2020).

10 12. Attached as **Exhibit K** is a true and correct copy of excerpts from the parties' Joint
11 Case Management Conference Statement in the matter of *Plata v. Newsom*, No. 01-CV-01351-
12 JST, ECF No. 3356 (N.D. Cal. June 18, 2020).

13 13. Attached as **Exhibit L** is a true and correct copy of the California Office of the
14 Inspector General's *COVID-19 Review Series, Part Three*, published at
15 [https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-COVID-19-Review-Series-Part-3---](https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-COVID-19-Review-Series-Part-3---Transfer-of-Patients-from-CIM.pdf)
16 [Transfer-of-Patients-from-CIM.pdf](https://www.oig.ca.gov/wp-content/uploads/2021/02/OIG-COVID-19-Review-Series-Part-3---Transfer-of-Patients-from-CIM.pdf) as it existed on December 22, 2021.

17 14. Attached as **Exhibit M** is a true and correct copy of the U.S. Department of Health
18 and Human Services' Office of General Counsel's Advisory Opinion 20-04 on the Public
19 Readiness and Emergency Preparedness Act and the Secretary's Declaration Under the Act
20 October 22, 2020, as Modified on October 23, 2020, published at
21 [https://www.hhs.gov/guidance/document/advisory-opinion-20-04-public-readiness-and-](https://www.hhs.gov/guidance/document/advisory-opinion-20-04-public-readiness-and-emergency-preparedness-act-and-secretarys)
22 [emergency-preparedness-act-and-secretarys](https://www.hhs.gov/guidance/document/advisory-opinion-20-04-public-readiness-and-emergency-preparedness-act-and-secretarys) as it existed on December 22, 2021.

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/s/ Zewugeberhan Desta
Zewugeberhan Desta
Deputy Attorney General

Decl. of Z. Desta in Supp. of Defs.' Mot. to Dismiss and for Summ. J. (5:20-cv-06326-EJD (PR))